No. 80-1313

MAY 4 1981

ALEXANDER L...

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-National Education Association)
Appellee

On Appeal from The Supreme Court of Florida

Brief Opposing Motion to Dismiss or Affirm

Julia McCain Lampkin-Asam, Ph.D.
Appellant
Representing Self
2243 Gorham Avenue
Ft. Myers, Florida 33907

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statement of Case	2
Summary of Argument	6
Argument	7
The appeal presents substantial federal question	7
The Supreme Court of the United States can take original jurisdiction	9
Conclusion	10
Certificate of Service	

TABLE OF AUTHORITIES

Page

Florida Constitution
Article V, Section 3(b)(3).....1,2,5-10

United States Code
28 U.S.C. section 1257(2) 2,8,10

28 U.S.C. section 2106 2,6

Cases
Bantam Books, Inc. v. Sullivan, R.I. 1963
83 S Ct 631,372 U.S. 58,9 L Ed 2d 589 ..7

Cohoes City School District v. Cohoes Teachers Association, 40 N.Y. 2d 774, 390 N.Y.S. 2d 53, 358 N.E. 2d 878 (N.Y. Ct App. 1976)..... 4

In Re Elmore, 1967
382 F 2d 125, 127 U.S.App.D.C. 176 7

Fredericks v. School Bd. of Monroe County, Fla. App. 307 So 2d 463 8

Greenbelt Co. op. Pub. Ass'n v. Bressler, Md. 1970, 90 S Ct 1537, 398 U.S. 6
26 L Ed 2d 6 7

Horwitt v. Horwitt, D.C. Conn. 1950
90 F Supp, 528 7

Lake County Education Ass'n v. School Bd of Lake County, 360 So 2d 1280,1284..3

Standard Oil Co. v. Graves, Wash. 1919
39 S Ct 320, 249 U.S. 289, 63 L Ed 662..7

School Committee of West Bridgewater v. West Bridgewater Teachers' Ass'n 4
360 N.E. 2d 886 (Mass.1977)
Vaca v. Sipes 386 U.S. 171, 16 L Ed 2d 842,
87 S Ct 903 8

80-1313

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-
National Education Association)
Appellee

On Appeal from The Supreme Court
of Florida

Brief Opposing
Motion to Dismiss or Affirm

This Appellant's Brief is opposing the Appellee's Motion to Dismiss or Affirm because federal question exists whereby a state law (Article V, section 3(b)(3) of the Florida Constitution is repugnant to the U.S. Constitution (specifically

"due process" of the 5th and 14th Amendments to the U.S. Constitution and "equal protection" of the 14th Amendment to the U.S. Constitution) of the Appellant to have access to the highest court of the state, The Supreme Court of Florida. (See 28 U.S.C. 1257(2). Further, the Appellant respectfully requests the U.S. Supreme Court to take original jurisdiction of the instant case since a state law (Article V section 3(b)(3), Florida Constitution) is repugnant to the U.S. Constitution (specifically the 5th and 14th Amendments), and since the FTP-NEA has claimed legal representation when no legal representation was provided. (See 28 U.S.C. 2106).

STATEMENT OF THE CASE

The Appellant adheres to the Statement of the Case articulated in the Jurisdictional Statement Brief by the Appellant, dated February 2, 1981. The Appellant adheres to the Appendix presented in the Jurisdictional Statement Brief of the Appellant showing what happened in the courts below. The Appellant further adheres to the Statement of the Case articulated in the Reply Brief of Appellant to the "Brief for Amicus Curiae State of Florida" dated March 13, 1981.

The Appellant adheres to the Questions Presented in the Jurisdictional Statement Brief and makes the following questions: (1) Has Article 5, section 3(b)(3) of Florida Constitution infringed upon Appellant's right to have access to Florida Supreme Court? and (2) Can teachers' union claim representation at arbitration when it was not present and when in fact it admits that it did not provide legal assistance?

The action subtending the instant appeal arose when FTP-NEA, teachers' union failed to legally represent Appellant at arbitration. FTP-NEA's local affiliate, Teachers Association Lee County (TALC) was dependant on FTP-NEA according to the brochures to legally represent teachers at the arbitration stage of the grievance. On p. 3 of the Appellee's Brief, "Motion to Dismiss Appeal..." the FTP-NEA is perpetrating a fraud on the U.S.Supreme Court by claiming legal representation

quote from p. 3,

"Pursuant to such policy, legal representation was accorded to the Appellant by the FTP-NEA in the conduct of several grievance proceedings which she had initiated with her employer."

when no legal representation was provided in the school year 1977-78. See letter from FTP-NEA p. 62 in Record and Exhibit G of the Amended Complaint. This letter from FTP-NEA dated July 18, 1979 states,

"FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Further FTP-NEA was not present at two arbitrations.

The Appellant takes exception to the following statement made by Appellee on p. 3 which states,

"In accordance with the legal services policy of the FTP-NEA, the Appellant's legal case was reviewed and determined to be <u>without a sound legal basis</u>." (Emphasis added.)

The point is that a sound legal basis existed for the arbitration case as evidenced in the Florida case, <u>Lake County Education Association v. School Board of Lake County</u>, 360 So 2d 1280 at 1284 which states,

"Where an agreement has been reached on procedures, the arbitrator's decision granting a nontenured teacher relief because of the failure to follow such procedures has been upheld."

Also see Cohoes City School District v. Cohoes Teachers Association, 40 N.Y. 2d 774, 390 N.Y.S 2d 53, 358 N.E. 2d 878 (N.Y. Ct App. 1976); School Committee of West Bridgewater v. West Bridgewater Teachers' Association 360 N.E. 2d 886 (Mass.1977).

FTP-NEA failed to respond to the second arbitration at all thus FTP-NEA showed negligence per se and failed in the union's duty of fair representation by not being present at two arbitrations.

The FTP-NEA on pp. 3-4 made an incorrect statement, quoted below,

"The Appellant did not exhaust the internal procedures available to her in seeking to overturn the non-funding determination."

because the Appellant appealed to the NEA (National Education Association) the national affiliate, who refused to provide legal representation. (See record p. 71, which is Exhibit K, attached to the Amended Complaint).

The FTP-NEA was incorrect on p. 4 when the following statement was made; quoted,

"The trial court accorded the Appellant broad latitude and carefully considered all of the issues presented and finally entered summary judgment in favor of the FTP-NEA"

because the Circuit Judge in his order made a false statement in his order as the reason he made the Summary Judgment in favor of the Defendant.

The Circuit Judge in his order (see pp. a-4 through a-5 of Appendix to Appellant's

Jurisdictional statement Brief), stated,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

This statement by the Circuit Judge is impeached by FTP-NEA own letter dated July 18, 1979, (Record p. 62 and Exhibit G attached to the Amended Complaint).

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The District Court of Appeal, First District, just "per curiam affirmed" with no opinion a fraudulent reason by the Circuit Judge since his decision of Summary Judgment was based on the above false statement.

The Appellant's rights to "due process" in any state court based on the merits of the case has been denied.

The substantial federal question exists whether the new Florida Statute, Article V, section 3(b)(3), Florida Constitution, (quoted and discussed in the Jurisdictional Statement Brief by Appellant) is repugnant to the U.S. Constitution (Amendments 5 and 14 "due process" and Amendment 14 "equal protection"? Since the merits of this case was not reviewed in any state court and the case was not tried by a jury the U.S. Constitutional rights of the Appellant to "due process" and "equal protection" of the law were violated.

SUMMARY OF ARGUMENT

The Appellant in this Brief Opposing the Appellee's Motion to Dismiss or Affirm adheres to the Jurisdictional Statement Brief by Appellant concerning the "Questions Presented", "Constitutional Provisions and Statutes Involved, "Substantiality of the Questions Presented", and "Conclusion". The Appellant in this Brief further adheres to the Reply Brief for Appellant responding to the Brief Amicus Curiae State of Florida.

The Appellee's Motion to Dismiss or Affirm should be denied because substantial federal questions exists in this instant case. The Supreme Court of the United States can take jurisdiction under 28 USC section 1257 (2). The federal questions is,can the new Florida Statute, Article V, section 3(b)(3), Florida Constitution, infringe upon the U.S. Constitutional rights of an individual to "due process" and equal protection" under the 14th amendment and "due process" in the 5th amendment?

The Supreme Court of the United States can take original jurisdiction of the state case according to 28 USC section 2106 which states,

> "The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment...,and may remand the cause and direct the entry of such appropriate judgment...or requite such further proceedings to be had as may be just under the circumstances."

United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes.

See Horwitt v. Horwitt, D.C. Conn. 1950, 90 F Supp., 528. Also see In re Elmore, 1967, 382 F 2d 125, 127, U.S. App. D.C. 176; Greenbelt Co. op. Pub. Ass'n v. Bresler, Md. 1970, 90 S Ct 1537, 398 U.S. 6, 26 L Ed 2d 6; Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S Ct 631, 372 U.S. 58, 9 L Ed 2d 584; Standard Oil Co. v. Graves, Wash. 1919, 39 S Ct 320, 249 U.S. 389, 63 L Ed. 662.

ARGUMENT

The appeal presents substantial federal question.

The new Florida Statute, Article V, section 3(b)(3), Florida Constitution, was repugnant to the U.S. Constitutional rights (amendment 14 "due process" and "equal protection" and amendment 5 "due process") because the Appellant did not have access to the highest state court. The merits of this instant case have not been tried in any state court because the Appellant's right to a trial by a jury was blocked by the erroneous and fraudulent decision of summary judgment by a circuit court judge. The Appellant's constitutional rights were further violated when the District Court of Appeal, First District, of the State of Florida affirmed "per curiam affirmed" the circuit court decision of summary judgment with the justices writing no opinion leading to the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution preventing the Appellant access to the highest court of the state, The Supreme Court of Florida. (See p. 5 of this Brief for quote from Circuit Judge for reason why he made summary judgment. This statement by the Circuit Judge is impeached by FTP-NEA own letter dated July 18, 1979,

(Record p. 62 and Exhibit G attached to the Amended Complaint).

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Therefore, FTP-NEA is perpetrating a fraud on this court claiming any legal representation because the FTP-NEA provided no legal representation in the school year 1977-78 and FTP-NEA was not present at any arbitration. See Vaca v. Sipes, 386 U.S. 171, 17 L Ed 2d 842, 87 S Ct 903, which states,

> "A union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion."

Also see Fredericks v. School Board of Monroe County, Fla. App. 307 So 2d 463, which states,

> "Teachers' association had standing to bring suit on behalf of nontenured teacher to compel school board to exhaust the grievance procedure it adopted and to submit teacher's grievance to an arbitrator."

Therefore, if the Appellant had not been blocked by the new Florida Statute, Article V, section 3(b)(3) preventing access to the state highest court, The Supreme Court of Florida, the instant case would have been reversed as a matter of law.

The Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2) which states,

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(Note footnote 1 on p. 9 of the Appellee's Brief is incorrect based on the law cited Vaca v. Sipes, supra and Fredericks v. School Board of Monroe County supra).

The Supreme Court of the United States can take original jurisdiction

The Supreme Court of the United States according to 28 USC, section 2106, can take original jurisdiction because a new change in Florida law, Article V, section 3(b)(3) is repugnant to the U.S. Constitution and this new Florida law has blocked the Appellant access to the highest state court, The Supreme Court of Florida, where the instant case could have been reversed. Another reason why the Supreme Court of the United States can take original jurisdiction is due to the fact the FTP-NEA has perpetrated a fraud on the court by claiming to have provided legal representation when no legal representation was provided in the school year 1977-78 according to FTP-NEA own letter dated July 18, 1979, (Record p. 62 and Exhibit G attached to the Amended Complaint),

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Further, no legal representative from FTP-NEA was present at two arbitrations of the Appellant. Further, this same quote from Exhibit G impeaches the statement by the circuit judge giving the following reason for summary judgment, (see a-4,a-5 Appendix to the Jurisdictional Brief),

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the defendant." This statement by the judge is incorrect. The District Court of Appeal, First District, State of Florida "per curiam affirmed" this fraudulent and erroneous summary judgment by the circuit court judge.

CONCLUSION

1. The Supreme Court of the United States should take jurisdiction of the instant case under 28 USC 1257(2) and allow the Appellant to write an Appellant's Merit Brief.

2. The new Florida Statute, Article V, section 3(b)(3) of the Florida Constitution did infringe upon the Appellant's Constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to U.S. Constitution) because the Appellant was not allowed access to the highest court of the state, The Supreme Court of Florida, due to the new Florida Statute.

3. The Appellee's "Motion to dismiss appeal or, in the alternative to affirm decision below" should be denied, based on the fact that a substantial federal question exists.

4. As an alternative, the decision by the Supreme Court of Florida not to review the case should be reversed since a Florida Statute is repugnant to the U.S. Constitution and the Supreme Court of the United States can order the Supreme Court of Florida to review the merits of the case.

5. The Supreme Court of the United States does have jurisdiction in a case when a state statute infringes on the federal constitution. The Supreme Court of the United States can take original jurisdiction to see that justice is done or The Supreme Court of the United States can remand to a lower appellate court with instructions since the Appellant's "due process" rights were violated because the case was not decided on its merits in any state court.

Respectfully submitted,

Julia McCain Lampkin-Asam

Julia McCain Lampkin-Asam, Ph.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of May 1981 a copy of the above Brief Opposing Motion to Dismiss or Affirm of the Appellant was mailed to the State of Florida, hon. Gov. Daniel Robert Graham and the Attorney General, Jim Smith, The Capitol, Tallahassee, Florida; The Supreme Court of Florida and the District Court of Appeal, First District, The Supreme Court Building, Tallahassee, Florida; Circuit Court of the Second Judicial Circuit in and for Leon County, Leon County Courthouse, Tallahassee, Florida and FTP-NEA, (Florida Teaching Profession-National Education Association) Mr. John Myrick, President, and Mr. Ronald Meyer, Attorney, 213 S. Adams St. Tallahassee, Florida 32301.

Julia McCain Lampkin Asam

By: Julia McCain Lampkin-Asam, Ph.D.
Appellant, Representing Self
2243 Gorham Ave.
Ft. Myers, Florida 33907